

TATEM MANUFACTURING CO. AND MERIDEN
INDUSTRIES CO.

APRIL 22, 1958.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. DONOHUE, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany H. Res. 519]

The Committee on the Judiciary, to whom was referred the bill (H. Res. 519) providing for sending the bills H. R. 6358 and H. R. 6923 and accompanying papers to the Court of Claims, having considered the same, report favorably thereon without amendment and recommend that the resolution do pass.

PURPOSE

The purpose of House Resolution 519 is to refer the bills H. R. 6358, for the relief of the Tatem Manufacturing Co., and H. R. 6923, for the relief of Meriden Industries Co., to the Court of Claims pursuant to sections 1492 and 2509 of title 28 of the United States Code, with the direction that the matters be considered in accordance with the provisions of those sections and the court report its findings to the House of Representatives so as to inform the Congress of the nature of the demands as claims against the United States.

[H. R. 6358 and H. R. 6923, 85th Cong., 1st sess.]

[H. R. 6358, 85th Cong., 1st sess.]

A BILL For the relief of the Tatem Manufacturing Company

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Tatem Manufacturing Company, Eastford, Connecticut, the sum of \$8,080. The payment of such

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sum shall be in full settlement of all claims of the Tatem Manufacturing Company against the United States for amounts due such company as a subcontractor to Harvey-Whipple, Incorporated, Springfield, Massachusetts, under Contract, CLN-DA-11-009-2M-18702, 18703, 18704, entered into between Harvey-Whipple, Incorporated, and the Chicago Quartermaster Depot, Department of the Army: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

SEC. 2. Upon the payment to the Tatem Manufacturing Company of the sum authorized by the first section of this Act, all rights and remedies of such Company against Harvey-Whipple, Incorporated, to recover amounts due such Company as a subcontractor to such corporation under the contract referred to in such first section, shall be transferred to the United States.

[H. R. 6923, 85th Cong., 1st sess.]

A BILL For the relief of Meriden Industries Company

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Meriden Industries Company, Hamden, Connecticut, the sum of \$24,357.42. The payment of such sum shall be in full settlement of all claims of the Meriden Industries Company against the United States for amounts due such company as a subcontractor to Harvey-Whipple, Incorporated, Springfield, Massachusetts, under contract CLN-DA-11-009-QM-18702, 18703, 18704, entered into between Harvey-Whipple, Incorporated, and the Chicago Quartermaster Depot, Department of the Army: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

SEC. 2. Upon the payment to the Meriden Industries Company of the sum authorized by the first section of this Act, all rights and remedies of such company against Harvey-Whipple, Incorporated, to recover amounts due such company as a subcontractor to such corporation under the con-

tract referred to in such first section, shall be transferred to the United States.

STATEMENT

The Tatem Manufacturing Co. and the Meriden Industries Co., as subcontractors, agreed to supply certain component parts for entrenching tools required by Harvey-Whipple, Inc. of Springfield, Mass., under its contract with the United States Government.

Harvey-Whipple, Inc., is a Massachusetts corporation, and its primary business involved the manufacture and distribution of automatic oil-heating equipment. On May 26, 1952, it entered into contracts with the Government for the manufacture of entrenching tools. The award made to Harvey-Whipple, Inc., on that date took the form of three separate contracts, DA 11-009-QM-18702, DA 11-009-QM-18703, and DA 11-009-QM-18704. That corporation intended to obtain all of the component parts of the entrenching tools by subcontract, and to perform only the assembly, painting, and packing in its own plant. Meriden Industries Co., of Mount Carmel, Conn., supplying blades, picks, hinges, and sockets; and the Tatem Manufacturing Co. of Eastwood, Conn., which completed the production of handles, were among the major subcontractors. Further facts concerning this contract are detailed in the report of the Department of the Army on H. R. 9552, a bill for the relief of Harvey-Whipple, Inc., and that report has been attached to this report.

In connection with the bill H. R. 9552, for the relief of Harvey-Whipple Inc., this committee reported House Resolution 487 referring H. R. 9552 to the Court of Claims in the same manner as is now proposed in the case of H. R. 6358 and H. R. 6923 (H. Rept. No. 1515, 85th Cong. 2d Sess.), House Resolution 487 passed the House on April 1, 1958.

After considering the claims asserted by Tatem Manufacturing Co. and the Meriden Industries Co., this committee has concluded that the two bills, H. R. 6358 and H. R. 6923, should also be referred to the Court of Claims in accordance with the procedures for congressional reference cases set out in sections 1492 and 2509 of title 28 of the United States Code. The two claims are related to the matter already referred by House Resolution 487, and this committee feels that it would be best if these two claims were handled in the same way. Accordingly, this committee recommends that House Resolution 519 be considered favorably.

TREASURY DEPARTMENT,
Washington, November 8, 1957.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your letter dated April 16, 1957, requesting a report on H. R. 6358, a bill for the relief of the Tatem Manufacturing Co. The bill, if enacted, would authorize and direct the Secretary of the Treasury to pay out of the Treasury the sum of \$8,080 in full settlement of all claims of the Tatem Manufacturing Co. against the United States for amounts due such company as a subcontractor to Harvey-Whipple, Inc., under the latter's

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3 prime contracts, CLN-DA-11-009-QM-18702, 18703, and 18704 with the Chicago Quartermaster Depot, Department of the Army.

As indicated by the bill, privity of contract existed between Tatem and Harvey-Whipple but not between Tatem and the Chicago Quartermaster Depot. There is no obligation on the part of the Government, under contract, statute or otherwise, to pay the claims of Tatem for amounts due it as a subcontractor to Harvey-Whipple.

The Treasury Department opposes enactment of the bill for that reason and for the further reason that such enactment would open the door for similar relief not only for other unpaid subcontractors of Harvey-Whipple but also for innumerable unpaid subcontractors of other Government contractors, with a resulting impact on the Treasury which this Department is not in a position to estimate. The attached memorandum sets forth the pertinent facts in this case as disclosed by the files of this Department.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

LAURENCE B. ROBBINS,
Acting Secretary of the Treasury.

MEMORANDUM RE H. R. 6358, FOR THE RELIEF OF THE TATEM
MANUFACTURING CO.

On or about September 12, 1952, Reconstruction Finance Corporation, pursuant to section 302 of the Defense Production Act of 1950, as amended, and Executive Order No. 10161, as amended, made a loan to Harvey-Whipple, Inc., Springfield, Mass., for the purpose of providing funds for the performance by Harvey-Whipple of its three prime contracts CLN-DA-11-009-QM-18702 (for 500,000 intrenching tools), 18703 (for 50,000 intrenching tools), and 18704 (for 517,000 intrenching tools) with the Chicago Quartermaster Depot of the Army. The loan was secured by, among other things, a second mortgage on fixed assets and assignments by Harvey-Whipple to RFC of all moneys due or to become due under such prime Government contracts.

By virtue of subdivisions (a) (2) and (b) of section 107 of the Reconstruction Finance Corporation Liquidation Act and Executive Order No. 10489, amending Executive Order 10480, all of the right, title, and interest of RFC in and to the loans made by it under section 302 of the Defense Production Act of 1950, as amended, including the loan to Harvey-Whipple, were transferred to the Secretary of the Treasury, effective as of the close of business on September 28, 1953.

After the completion of contract No. 18703 in August 1953, Harvey-Whipple encountered difficulty in meeting delivery dates under the remaining two prime contracts due to the limited capacity of its suppliers of component parts and insufficient working capital. On September 9, 1955, Harvey-Whipple filed a voluntary petition for reorganization under chapter X of the Bankruptcy Act, as amended.

The court found that a fair, equitable, and feasible plan for the reorganization of Harvey-Whipple could not be formulated and dismissed the chapter X proceedings. A foreclosure judgment has been entered with respect to the mortgage and sale under such judgment

is pending. The Chicago Quartermaster Depot of the Army terminated for default contract No. 18702 on January 30, 1957, and contract No. 18704 on February 4, 1957. As approximately 85 percent of the proceeds received under the assignments of moneys due and to become due under the three prime contracts was released to Harvey-Whipple to assist it in meeting its expenses and as an advance in connection with the loan was necessary to protect the lien of the second mortgage on the fixed assets, a loss on the loan is anticipated.

According to the letter to the Treasury Department dated October 24, 1955, from Tatem Manufacturing Co., it became in February of 1955 a subcontractor of Harvey-Whipple under prime contracts Nos. 18702 and 18704. This was after the treasurer of Tatem had been expressly advised over the telephone by a representative of the Treasury Department that the Secretary of the Treasury could not guarantee payment to the subcontractors of their claims against Harvey-Whipple.

DEPARTMENT OF THE ARMY,
Washington, D. C., April 21, 1958.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H. R. 6358, 85th Congress, a bill for the relief of the Tatem Manufacturing Co.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Tatem Manufacturing Company, Eastford, Connecticut, the sum of \$8,080. The payment of such sum shall be in full settlement of all claims of the Tatem Manufacturing Company against the United States for amounts due such company as a subcontractor to Harvey-Whipple, Incorporated, Springfield, Massachusetts, under Contract CLN-DA-11-009-2M-18702, 18703, 18704, entered into between Harvey-Whipple, Incorporated, and the Chicago Quartermaster Depot, Department of the Army: * * *.

"SEC. 2. Upon the payment to the Tatem Manufacturing Company of the sum authorized by the first section of this Act, all rights and remedies of such Company against Harvey-Whipple, Incorporated, to recover amounts due such Company as a subcontractor to such corporation under the contract referred to in such first section, shall be transferred to the United States."

The Department of the Army is opposed to the above-mentioned bill.

Records of the Department of the Army reveal that the Tatem Manufacturing Co. was one of a number of subcontractors to Harvey-Whipple, Inc., on contracts DA 11-009-QM-18702 and DA 11-009-QM-18704. (A complete report of the facts and views of the Department on the prime contracts may be found in the report submitted to your committee on February 24, 1958, by the Department of the Army on H. R. 9552, 85th Congress, a bill for the relief of Harvey-Whipple, Inc.) Tatem Manufacturing Co. entered into a subcontract with Harvey-Whipple, Inc., in February 1955, to produce handles for

entrenching tools, the end products to be produced by the prime contractor. No contractual relationships have existed at any time between the Tatem Manufacturing Co. and the Army. The Department has no information as to the contents of the contracts between the claimant and the prime contractor.

Harvey-Whipple, Inc., was 1 of 16 bidders on invitation for bid No. QM 11-009-62-1203. The items to be procured under the proposed contract consisted of 1,067,000 entrenching tools to be manufactured in accordance with military specifications MIL-I-11519 (QMC). Harvey-Whipple's bid, submitted on April 8, 1952, was \$1.80 per item, with a total contract price of \$1,920,600, and was the low bid. Consequently, an award for the items was made to Harvey-Whipple, Inc., on May 26, 1952, and took the form of three separate contracts, DA 11-009-QM-18702, DA 11-009-QM-18703, and DA 11-009-QM-18704 (hereinafter referred to as contracts 18702, 18703, and 18704, respectively). Although 3 separate contracts were established, they were treated as 1 for all practical purposes.

Under the delivery schedule as set forth in the original contract, the prime contractor was expected to produce 50,000 tools in October 1952, the first month of his production, completing contract 18703. It was to increase output to 100,000 tools in November 1952, equally divided between contracts 18702 and 18704. In December 1952 it was expected to produce 60,000 tools for contract 18702 and 65,000 tools for contract 18704, maintaining that monthly rate for 7 months, then dropping to 42,000 tools total in the final month of the contract, completing delivery by July 31, 1953.

Both of the prime contracts were changed from time to time. Although many of the changes occurred prior to Tatem Manufacturing Co.'s contract with Harvey-Whipple, Inc., they are relevant to the proposed bill, in that they indicate the type of difficulties the prime contractor was encountering, and hence to a certain extent show why the claimant suffered a loss in its contract with Harvey-Whipple, Inc. Briefly, the chronological history of contractual changes is as follows:

(a) On June 12, 1953, change order No. 1 to the three contracts were issued to correct an error in the specifications as to packing and packaging the completed items, and to increase the contract price to compensate for additional costs resulting from that change. The amount of the increase was \$0.0428 per item and represented an increase in the total contract price of \$21,400.

(b) Change order No. 2 was issued on June 30, 1953, authorizing the acceptance, at a reduced price, of 12,402 tools painted with sub-specification paint.

(c) On September 21, 1953, supplemental agreement No. 2 was entered into. The purpose of this agreement was to make a number of changes in the specifications, some of which were correction of errors and others of which eased test requirements. The delivery schedule was also amended by this supplemental agreement, provided that initial deliveries would commence during November 1953, and would be completed by July 31, 1954.

(d) Supplemental agreement No. 3 was entered into on December 31, 1953, and provided for the acceptance, at a \$0.06 decrease in price, of 7,200 sub-specification tools offered by the contractor. On February 17, 1954, supplemental agreement No. 4 was executed. This agreement provided for an extension in the delivery schedule, extending the date of final delivery under the contract to December 16, 1954.

(e) Supplemental agreement No. 5 to contract 18702 was entered into on March 25, 1954, and provided for the acceptance of 700 sub-specification tools at a \$0.06 per unit reduction in price. On August 5, 1954, supplemental agreement No. 4 to contract 18704 was executed and provided for the acceptance of 16,000 sub-specification tools.

(f) The contracting officer on August 13, 1954, ordered a partial termination of the 2 outstanding contracts (18702 and 18704), providing for a reduction of 319,740 tools to be delivered under the 2 contracts. In the notices of partial termination, the contracting officer noted existing and anticipated delinquencies under both of the contracts; and noted further that the contracts were interrelated and provided also for extension of the delivery schedules on the untermi-nated items.

(g) Supplemental agreement No. 6 to contract 18702 was entered into in December 1954, and provided for the acceptance of 40,000 tools embodying parts made from other than specification steel.

(h) On January 14, 1955, supplemental agreement No. 7 to contract 18702 and No. 5 to contract 18704 were entered into. These agree-ments established the cost to the Government of tools destroyed during the conduct of certain tests necessary for the performance of the contracts.

(i) On March 17, 1955, supplemental agreement No. 8 to contract 18702 and No. 6 to contract 18704 were executed. These two agree-ments were identical, except as to the number of tools affected. The agreements recited the number of tools remaining to be delivered (264,996 under both contracts), the proposal of the contractor for a revised delivery schedule, and the offer by the contractor and accept-ance by the Government of the consideration for such revision and extension of the delivery schedule. The delivery schedules were re-vised and extended, authorizing the contractor to deliver 15,000 items under each contract by April 30, 1955, and the same number by the last day of each month thereafter into January 1956; to deliver 4,994 items under contract 18702 and 25,006 items under contract 18704 in February 1956, and 16,994 items under contract 18704 in March 1956. Harvey-Whipple, Inc., further agreed to waive and release any and all claims against the Government arising out of the three contracts and further to withdraw its appeals from the partial terminations for default discussed above. In executing these releases the contractor agreed specifically, in part, as follows:

"The contractor withdraws its notice of appeal, dated September 17, 1954, from notice of partial termination for default, dated August 13, 1954, this agreement hereby constituting a formal withdrawal of said notice of appeal, and the contractor thereby intends and does forever hereafter foreclose itself from its right to appeal from said termination for default.

"Harvey-Whipple, Inc., does hereby, for itself and its successors, release and forever discharge the United States of America of and from all and all manner of actions, causes of action, suits, proceedings, debts, dues, judgments, damages, claims and demands whatsoever in law or equity or under administrative procedures which against the United States of America the said Harvey-Whipple, Inc., ever had, now has or may have for or by reason of any matter, cause or thing whatsoever arising under and by virtue of contract No. DA 11-009 qm-18702 (O. I. No. 10289-C&E-52), contract No. DA 11-009 qm-18703 (O. I. No. 10290-C&E-52) and contract No. DA 11-009

qm-18704 (O. I. No. 10291-C&E-52) from the beginning of the world to the date of these presents, it being the intention and the understanding of the parties that this release and discharge shall apply to but is not limited to (a) any difficulties, conflicts, ambiguities, inconsistencies, discrepancies or impossibilities which may have been or may be contained in the contracts No. DA 11-009 qm-18702, qm-18703 and qm-18704 and any specifications referenced therein, (b) any upward adjustment in price under the terms and conditions of supplemental agreement No. 2 to contract No. DA 11-009 qm-18702, dated September 21, 1953, and supplemental agreement No. 2 to contract No. DA 11-009 qm-18704, dated September 21, 1953, in excess of \$0.11341 per unit and (c) the notices of partial termination for default, dated August 13, 1954, under contracts No. DA 11-009 qm-18702 (O. I. No. 10289-C&E-52) and contract No. DA 11-009 qm-18704 (O. I. No. 10291-C&E-52).

"Except as hereby amended, all the terms and conditions of the contract remain in full force and effect and shall also apply in carrying out the provisions of this agreement."

(j) On January 30, 1957, contract 18702 was terminated for default and on February 4, 1957, contract 18704 was terminated in the same manner. By a notice dated March 2, 1957, the contractor appealed to the Armed Services Board of Contract Appeals from the said termination pursuant to the provisions of the disputes clause. The matter was heard by the Armed Services Board of Contract Appeals on December 6, 1957, and a decision was rendered thereon on December 26, 1957, dismissing the appeal because the Board had no jurisdiction to hear the case, in view of general releases given to the Government by the contractor.

Very little information pertinent to the relations between the Tatem Manufacturing Co. and Harvey-Whipple, Inc., appears in departmental files. However, an indication of the difficulties the Tatem Manufacturing Co. encountered with Harvey-Whipple, Inc., may be found in a letter written by the claimant to the Treasury Department on October 24, 1955, stating that it could not continue with its subcontract because of the contractor's failure to meet obligations. A portion of this letter, quoted below, is particularly relevant to the merits of the subject bill:

"Before the Tatem Manufacturing Co. agreed to make handles for Harvey-Whipple a thorough investigation of the credit standing of the prime contractor was made with negative results as far as Tatem was concerned. Because of the insistence of Harvey-Whipple to the effect that they would and could pay because the terms of their RFC loan required that all subcontractors had to be paid every 14 days, the writer called your office February 18, 1955, on the phone and talked with Mr. Henrich, who advised that the RFC could not guarantee payment to the subcontractors but stated that Harvey-Whipple was meeting their obligation with you, the RFC, satisfactorily, and that Harvey-Whipple was satisfactorily meeting all obligations to their trade creditors. Your letter of February 21, 1955, confirms this fact."

Although the information furnished above is not complete, it does indicate that Tatem Manufacturing Co.'s only legal or equitable claim is against the prime contractor, and not against the United States. No evidence is available indicating that any action on the

part of the Government caused the loss, rather it appears that the loss resulted in part from the inability of the prime contractor to properly perform its contractual obligations and in part from the financial insecurity of the prime contractor. It is therefore apparent that the losses claimed by Tatem Manufacturing Co. resulted from risks assumed when it entered into a contract with a prime contractor who could not fulfill the terms of the contract and who could not discharge the resultant obligations. (This is made very clear in the portion of the October 24 letter quoted above.) Since no evidence exists that the losses were caused or aggravated by any action on the part of the Government or its agents, there appears to be no legal or equitable basis for the granting of any award to the claimant.

As noted above, the losses sustained by Tatem Manufacturing Co. resulted from financial difficulties encountered by Harvey-Whipple, Inc. In this respect it should be observed that the Defense Lending Division of the Treasury Department, as successor in interest to the Reconstruction Finance Corporation (which provided the financing for Harvey-Whipple, Inc.), may be able to provide additional information to the committee on the detailed financial difficulties encountered by Harvey-Whipple, Inc. No such information is available to the Department of the Army.

H. R. 6923, 85th Congress, a bill for the relief of the Meriden Industries Co., upon which the committee has requested the Department of the Army for its views, relates to another subcontractor of Harvey-Whipple, Inc., under the same contracts involved herein. The Department of the Army on February 24, 1958, submitted its report on H. R. 9552, 85th Congress, a bill for the relief of Harvey-Whipple, Inc.

For the reasons expressed herein the Department of the Army recommends that H. R. 6358 be not favorably considered by the Congress.

The cost of this bill, if approved, will be \$8,080.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

The report of the Department of the Army on H. R. 9552, the bill for the relief of Harvey-Whipple, Inc., is as follows:

DEPARTMENT OF THE ARMY,
Washington, D. C., February 24, 1958.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H. R. 9552, 85th Congress, a bill for the relief of Harvey-Whipple, Inc.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Harvey-Whipple, Inc., of Springfield, Mass., the sum of \$ _____. Such sum shall be in full satisfaction of all claims of the said Harvey-

Whipple, Inc., against the United States for compensation for losses incurred by such corporation in connection with the manufacture by such corporation of entrenching tools pursuant to contracts which were entered into between such corporation and the Quartermaster Corps of the United States Army in May 1952, and which are designated as DA 11-009-QM-18702, DA 11-009-QM-18703, and DA 11-009-QM-18704."

The Department of the Army is opposed to the above-mentioned bill.

Records of the Department of the Army reveal that Harvey-Whipple, Inc., was one of 16 bidders on Invitation For Bid No. QM 11-009-62-1203. The items to be procured under the proposed contract consisted of 1,067,000 entrenching tools to be manufactured in accordance with military specification MIL-I-11519 (QMC). Harvey-Whipple's bid, submitted on April 8, 1952, was \$1.80 per item, with a total contract price of \$1,920,600, and was the low bid on the procurement. Consequently, an award for the items was made to Harvey-Whipple on May 26, 1952, and took the form of three separate contracts, DA 11-009-QM-18702, DA 11-009-QM-18703, and DA 11-009-QM-18704 (hereinafter referred to as Contracts 18702, 18703, and 18704, respectively). Although three separate contracts were established, they were treated as one for all practical purposes.

Under the delivery schedule as set forth in the original contract, the company was expected to produce 50,000 tools in October 1952, the first month of his production, completing contract 18703. It was to increase output to 100,000 tools in November 1952, equally divided between contracts 18702 and 18704. In December 1952 it was expected to produce 60,000 tools for contract 18702 and 65,000 tools for contract 18704, maintaining that monthly rate for seven months, then dropping to 42,000 tools total in the final month of the contract, completing delivery by July 31, 1953.

All three of the contracts were modified from time to time. Briefly, the chronological history of contractual changes is as follows:

(a) On June 12, 1953, change orders No. 1 to each of the three contracts were issued to correct an error in the specifications as to packing and packaging the completed items, and to increase the contract price to compensate for additional costs resulting from that change. The amount of the increase was \$0.0428 per item and represented an increase in the total contract price of \$21,400.

(b) Change order No. 2 was issued on June 30, 1953, authorizing the acceptance, at a reduced price, of 12,402 tools painted with subspecification paint. This change, like change order No. 1, was agreed to by the contractor. This change order provided for a reduction in the contract price of one cent per item on the 12,400 subspecification tools and resulted in a total decrease of \$124.

(c) On September 21, 1953, supplemental agreement No. 2 was entered into. The purpose of this agreement was to make a number of changes in the specifications, some of which were correction of errors and others of which eased test requirements. The changes entailed additional cost in production and the agreement recited a difference of opinion between the Government and the contractor as to the appropriate amount by which the unit price should be increased. The contractor accepted the Government's figure, reserving its right

to claim an upward adjustment in price, and saving its rights under the disputes clause of the contract. The amount of the increase established by the supplemental agreement was \$0.11341 per unit, resulting in a total increase under the contract of \$52,565.54. The delivery schedule was also amended by this supplemental agreement, and provided that initial deliveries would commence during November 1953, and would be completed by July 31, 1954.

(d) Supplemental agreement No. 3 was entered into on December 31, 1953, and provided for the acceptance, at a \$0.06 decrease in price, of 7,200 subspecification tools offered by the contractor. On February 17, 1954, supplemental agreement No. 4 was executed. This agreement provided for an extension in the delivery schedule, extending the date of final delivery under the contract to December 16, 1954. In consideration of the extension of time for performance, the contractor accepted a \$0.00621 per unit reduction in price. (It should be noted that at the time of the execution of this supplemental agreement, 469,994 units were as yet undelivered.) This resulted in a total decrease under the contract of \$2,918.66.

(e) Supplemental agreement No. 5 to 18702 was entered into on March 25, 1954, and provided for the acceptance of 700 subspecification tools at a \$0.06 per unit reduction in price. The total decrease effected by this supplemental agreement was \$42.01. On August 5, 1954, supplemental agreement No. 4 to contract 18704 was executed and provided for the acceptance, at a \$0.05 per unit reduction in price, of 16,000 subspecification tools.

(f) The contracting officer on August 13, 1954, ordered a partial termination of the 2 outstanding contracts (18702 and 18704), providing for a reduction of 319,740 tools to be delivered under the 2 contracts. In the notices of partial termination, the contracting officer noted existing and anticipated delinquencies under both of the contracts; and noted further that the contracts were interrelated and provided also for extension of the delivery schedules on the unterminated items.

(g) Supplemental agreement No. 6 to contract 18702 was entered into in December 1954, and provided for the acceptance, at a \$0.05 per unit reduction of price, of 40,000 tools embodying parts made from other than specification steel.

(h) On January 14, 1955, supplemental agreement No. 7 to contract 18702 and No. 5 to contract 18704 were entered into. These agreements established the cost to the Government of tools destroyed during the conduct of certain tests necessary for the performance of the contracts.

(i) On March 17, 1955, supplemental agreement No. 8 to contract 18702 and No. 6 to contract 18704 were executed. These two agreements were identical, except as to the number of tools affected. The agreements recited the number of tools remaining to be delivered (264,996 under both contracts), the proposal of the contractor for a revised delivery schedule, and the offer by the contractor and acceptance by the Government of the consideration for such revision and extension of the delivery schedule. The supplemental agreements provided for a reduction of \$0.05 in the price on each of the remaining tools to be delivered. The delivery schedules were revised and extended, authorizing the contractor to deliver 15,000 items under each contract by April 30, 1955, and the same number by the last

day of each month thereafter into January 1956; to deliver 4,994 items under contract 18702 and 25,006 items under contract 18704 in February 1956, and 16,994 items under contract 18704 in March 1956. Harvey-Whipple, Inc., further agreed to waive and release any and all claims against the Government arising out of the three contracts and further to withdraw its appeals from the partial terminations for default discussed above. In executing these releases the contractor agreed specifically, in part, as follows:

"The contractor withdraws its notice of appeal, dated September 17, 1954, from notice of partial termination for default, dated August 13, 1954, this agreement hereby constituting a formal withdrawal of said notice of appeal, and the contractor thereby intends and does forever hereafter foreclose itself from its right to appeal from said termination for default.

"Harvey-Whipple, Inc., does hereby, for itself and its successors, release and forever discharge the United States of America of and from all and all manner of actions, causes of action, suits, proceedings, debts, dues, judgments, damages, claims and demands whatsoever in law or equity or under administrative procedures which against the United States of America the said Harvey-Whipple, Inc., ever had, now has or may have for or by reason of any matter, cause or thing whatsoever arising under and by virtue of contract No. DA 11-009 qm-18702 (O. I. No. 10289-C&E-52), contract No. DA 11-009 qm-18703 (O. I. No. 10290-C&E-52) and contract No. DA 11-009 qm-18704 (O. I. No. 10291-C&E-52) from the beginning of the world to the date of these presents, it being the intention and the understanding of the parties that this release and discharge shall apply to but is not limited to (a) any difficulties, conflicts, ambiguities, inconsistencies, discrepancies or impossibilities which may have been or may be contained in the contracts No. DA 11-009 qm-18702, qm-18703 and qm-18704 and any specifications referenced therein, (b) any upward adjustment in price under the terms and conditions of supplemental agreement No. 2 to contract No. DA 11-009 qm-18702, dated September 21, 1953 and supplemental agreement No. 2 to contract No. DA 11-009 qm-18704, dated September 21, 1953, in excess of \$0.11341 per unit and (c) the notices of partial termination for default, dated August 13, 1954, under contracts No. DA 11-009 qm-18702 (O. I. No. 10289-C&E-52) and contract No. DA 11-009 qm-18704 (O. I. No. 10291-C&E-52).

"Except as hereby amended, all the terms and conditions of the contract remain in full force and effect and shall also apply in carrying out the provisions of this Agreement."

j. On January 30, 1957, contract 18702 was terminated for default and on February 4, 1957, contract 18704 was terminated in the same manner. By a notice dated March 2, 1957, the contractor appealed to the Armed Services Board of Contract Appeals from the said termination pursuant to the provisions of the disputes clause. The matter was heard by the Armed Services Board of Contract Appeals on December 6, 1957, and a decision was rendered thereon on December 26, 1957, dismissing the appeal because the Board had no jurisdiction to hear the case, in view of the releases given to the Government by the contractor.

In seeking additional compensation, Harvey-Whipple, Inc., bases its claim on four main contentions:

(1) The specifications were entirely incorrect, incomplete, and that it was impossible to manufacture items under the specifications which would meet the test requirements of the Quartermaster Corps.

(2) That some delay in production was incurred because of a steel strike which commenced 3 days after the contract was awarded.

(3) That it was harassed by the misuse of authority and non-cooperation of the inspection personnel assigned to its plant by the Chicago Quartermaster Depot, and that this harassment resulted in unreasonable rejections causing delay and financial loss.

(4) That it was somehow coerced into signing the releases quoted above, and that as a result of this coercion the said releases should be considered void and of no effect.

In discussing the merits of this case, it is appropriate at this time to set forth the factual history of the Harvey-Whipple procurement. At preaward conferences between members of the Chicago Quartermaster Depot and representatives of Harvey-Whipple the company insisted that they had taken into consideration cost elements in manufacturing and had been reassured that their engineers, as well as proposed subcontractors, all understood the specifications, and further, that they anticipated no trouble in manufacturing the entrenching tools. It was the intention of the contractor at the outset to obtain all of the component parts of the entrenching tools by subcontract, performing in its own plant only the assembly, painting, and packing. In addition, the claimant subcontracted for the heat treating processing of certain parts. The major subcontractors were Meriden Industries Co. of Mount Carmel, Conn. (blades, picks, hinges, and sockets), and the Northern Handle Mills of Kansas City, Mo. (wooden handles (the Tatem Manufacturing Co. of Eastford, Conn., completed the production of the handles)). Other subcontractors were Blue Ridge Pressure Casting Co. (handle nuts), C. W. Haynes Laboratory (paint), Chicago Rivet and Machine Co. (hinge pins), Springfield Heat Treating Co. (heat treating), and Pioneer Box & Lumber Co. (packing boxes). Financing was to be obtained by the contractor through a loan from the Reconstruction Finance Corporation, to be secured by assignment of amounts due under the subject contracts.

Production was initially delayed by a strike in the steel industry. The contracting officer found that the strike had caused 154 days excusable delay in production. The contractor was informed that it would be expected to make its first delivery under contract 18703 on or before April 3, 1953, and first deliveries under contracts 18702 and 18704 on or before May 3, 1953, instead of as originally scheduled. The remainder of the delivery schedule was appropriately amended.

Preproduction samples of the tools were submitted by the contractor on or about November 6, 1952, and were forwarded to the Government for testing. The samples were found to be unacceptable, in that they fell short of specification requirements. Additional preproduction samples were submitted on December 27, 1952, which were accepted with notation of deficiencies. It is also pertinent to note that the contractor requested consideration be given to the use of nonspecification steel in the fabrication of the handle socket. This request was denied in a letter dated December 29, 1952. In the meantime, the subcontractor for the manufacture of blades and picks had

set up its dies and forged sockets with the lower grade steel. Later, when attempting to form the sockets from specification steel tubing the subcontractor found that adjustments had to be made in its dies with resulting delays.

Because of the delays in the production of the entrenching tools, arrangements were made in March 1953, for a daily progress report by the Government plant inspector. The inspector's reports, correspondence, and memorandums of conference show that the contractor encountered difficulty in a number of fields. For instance, the subcontractor of heat treatment for the socket and other components had trouble in obtaining proper heat treatment at all points of the socket. Another example of these difficulties was in the breaking of the pick blank die at the Meriden Industries. Also, in July 1953, the inspector reported that a total of 9,200 tools had been rejected for what appeared to be a defect inherent in about six or seven thousand substandard hinges inadvertently mixed with acceptable hinges.

During the manufacture of tools correction of specification was found to be desirable in order to make the manufacture of an acceptable tool less difficult. It was also found that testing procedures were more stringent than appeared necessary. Some of these problems were informally resolved by issuing less rigorous instructions to the inspectors and to the contractor. In July 1953, the contractor presented a list of changes in specifications which it believed necessary and which were eventually embodied in supplemental agreement No. 2 discussed above. This agreement extended the delivery schedules, and as previously noted increased the contract price in the amount of \$0.11341, and reserved the contractor's right to appeal in the event its claim for an additional increase was denied. After the date of supplemental agreement No. 2, there appear to have been no further complaints on the part of the contractor as to the specifications themselves, although the contractor did have some difficulty in producing tools to meet the amended specifications. These difficulties, however, resulted from his financial troubles, the receipt of nonspecification components from his suppliers, errors in assembly and contractor inspection, and difficulties of the manufacturers of the components in obtaining specification raw material. None of these difficulties were caused by any error in the amended specifications or through any Government action while administering the contracts.

On December 26, 1953, the contractor requested that action be taken no later than December 31, 1953, to grant further extensions of delivery schedules to February 28, 1954, on the basis of excusable delay, alleging that the delivery schedules set out in supplemental agreement No. 2 were inadequate. Negotiations resulting from this letter culminated in the execution of supplemental agreement No. 4, discussed above, which further extended the delivery schedules in consideration for a reduction in the contract price of \$0.00621 per item. Notwithstanding this agreement, on April 15, 1954, 1 month after the first deliveries were due under the amended delivery schedule, the contractor was delinquent in the delivery of 7,500 items and the delinquency increased thereafter.

In addition to the delays caused by production difficulties, further delays were caused by the inability of the contractor to secure satisfactory financing of the contracts and to maintain satisfactory credit with its suppliers and subcontractors. As early as August 14, 1953,

it became apparent that the contractor was having financial difficulties. A principal subcontractor, Meriden Industries, reported on that date, that it had approximately \$100,000 in inventory on the subcontract and that \$35,000 was owed to it by Harvey-Whipple. Meriden furnished the contracting officer with a copy of a demand made on Harvey-Whipple in September 1953, for the payment of past-due invoices. In the demand, the subcontractor notified Harvey-Whipple that production of components would not be resumed until it was established when past-due invoices would be paid, and until Meriden could be assured that future invoices would be paid promptly. On October 15, 1953, Harvey-Whipple informed the contracting officer that Reconstruction Finance Corporation was delaying a decision as to whether to release further advances on the loan and for that reason production had not been resumed. On December 7, 1953, the contracting officer learned that the contractor was delinquent in its payments to Reconstruction Finance Corporation. On December 10, 1953, it was learned that the contractor had succeeded in making an interest payment but had failed to make its scheduled principal payment on the loan. On December 18, 1953, the Boston Office of Reconstruction Finance Corporation informed the contracting officer that Northern Handle Mills, supplier of handles for the contractor, had been unable to make a payment on its loan from Reconstruction Finance Corporation because of inability to obtain payment from Harvey-Whipple for handles delivered. On December 21, 1953, a telephone conference was held with the Boston Reconstruction Finance Corporation office in which it was learned that the contractor had made payment of principal due on its loan and had requested a further advance of \$55,000. On April 27, 1954, after the execution of supplemental agreement No. 4, the contractor again complained that Reconstruction Finance Corporation had withheld sizable sums of its loans and that the contractor had not been able to pay certain of its subcontractors. This, in turn, had held up deliveries of components. In his letter, the contractor stated that it might not be able to ship the required number of tools by May 15, 1954. On May 5, 1954, the contracting officer warned that the withholding of funds by Reconstruction Finance Corporation did not constitute an excusable delay. On May 19, 1954, the contractor requested a further extension of delivery schedule for the reason that withholding of funds by Reconstruction Finance Corporation had made it impossible for the contractor to maintain his schedule. On June 18, 1954, the contractor was informed by letter that the extension of the delivery schedule could not be granted. At the same time it was given notice that it was in default and that if it failed to demonstrate, within 30 days, its ability to make substantial deliveries and to obtain adequate financing to complete the contract, it could result in the contracting officer terminating the contracts. It should be noted that by July 16, 1954, the contractor was delinquent in the delivery of 149,000 tools, and its anticipated rate of delivery for the months of July, August, September, and October indicated an increase in the amount of delinquency.

On August 13, 1954, the contracting officer issued notices of partial termination for default on each of the two remaining contracts. This notice of termination has been discussed above. The contractor filed timely appeals from each of the partial terminations, but as

previously noted, the appeals were subsequently withdrawn. On January 25, 1955, the contractor, through its representatives, offered to withdraw the appeals from the partial termination for default, to waive all claims against the Government, to consider a reduction in price and to withdraw any allegations of economic duress. The contractor further requested that the terminated items be reinstated, but was advised that this would be impossible.

On February 10, 1955, the contracting officer forwarded notices of delinquency to the contractor. The contractor replied that it could demonstrate ability to arrange financing and requested a further extension of the delivery schedule. A conference was held on February 24, 1955, at which time the contractor submitted written proposals. A subsequent conference was held on March 9, 1955, between the contracting officer and representatives of the contractor at which time a memorandum of agreement was executed outlining the basis for the proposed extension of the delivery schedules. This extension was ultimately embodied in supplemental agreement No. 8 to contract 18702 and supplemental agreement No. 6 to contract 18704. The terms of these supplemental agreements are discussed, and in part set out above. On August 1, 1955, Meriden Industries informed the contracting officer that it would make no further deliveries of components until it had received payment by Harvey-Whipple of all past-due accounts. On the same day the Springfield Heat Treating Co. notified Harvey-Whipple and the contracting officer that it would no longer perform heat treating services unless payment of past-due invoices was made in 5 days. On August 2, 1955, the Blue Ridge Pressure Casting Co. informed the contracting officer that no further shipments would be made to the contractor unless new and satisfactory financial arrangements were made. On August 29, 1955, the contractor requested a further extension of time due to withholding of funds by the Reconstruction Finance Corporation.

Under the amended delivery schedules the contractor was not delinquent in deliveries as of July 31, 1955, but no deliveries were made after that date, and the contractor became wholly delinquent on the two contracts as of March 31, 1956. On September 9, 1955, the contractor filed a petition in the United States District Court, Boston, Mass., for reorganization under chapter X of the Bankruptcy Act (11 U. S. C. 501 et seq.) and for appointment of a trustee. On September 28, 1955, the trustee in bankruptcy conferred with the contracting officer at some length as to whether the trustee would elect to continue performance of the contracts. No decision was reached at this time, but on December 21, 1955, the trustee informed the Quartermaster General that he had decided not to continue performance of the two contracts. However, before this decision could be implemented the action under chapter X was dismissed by the court.

On January 18, 1956, the Defense Lending Division of the Treasury Department, successor in interest to the Reconstruction Finance Corporation, notified the Chicago Quartermaster Depot that it was foreclosing the factors' lien on inventory which was the collateral for their loan to Harvey-Whipple, Inc. On January 30, 1957, contract 18702 was terminated for default by decision of the contracting officer, and on February 4, 1957, contract 18704 was terminated in the same manner.

A detailed review of the facts of the case reveals that the inability of Harvey-Whipple to meet its contractual obligations resulted from the company's weak financial structure and an inability to produce tools in accordance with the specifications. Undoubtedly, the steel strike resulted in delays; however, the contracting officer granted an appropriate extension of time because of the strike, which extension was accepted by Harvey-Whipple. There is no evidence to support the contention that Harvey-Whipple was harassed by misuse of authority and lack of cooperation of Government personnel. Rather the records show that every consideration was afforded to the company, and that it was granted numerous deviations from the specifications and extensions of time. The specifications were modified to meet the objections of the company. In supplemental agreement No. 2 the company accepted the Government's proposed unit price increase but reserved its right under the disputes clause to claim an upward adjustment in price. However, the execution of the general release quoted above bars any further reliance upon that reservation. The United States Supreme Court and the Court of Claims have consistently ruled that a general release of claims against the United States covers every matter arising under or by virtue of the contract, and that all such claims are effectively barred. (*William Cramp & Sons Ship & Engine Building Co. v. United States*, 206 U. S. 118 (1907); *A. L. Coup Construction Co., et al. v. United States*, 134 Ct. Cl. 392 (1956), and cases cited therein.)

The only remaining contention by Harvey-Whipple is that because of its financial condition it was coerced by the contracting officer into signing the release, and therefore the release is of no effect. In a very similar case, the Court of Claims ruled that the stress of business conditions and the contractor's financial difficulties for which the Government is not responsible, are not properly the basis for an allegation of duress in executing a general release of claims against the Government. (*Frauhaus Southwest Garment Co. v. United States*, 126 Ct. Cl. 51 (1953); see also *Lawrence v. Muter Co., et al.*, 171 F. 2d 380 (7th Cir. 1949).)

It appears therefore that there is no equitable or legal basis for the enactment of this bill, and the Department of the Army recommends that it not be favorably considered.

The Department of the Army is currently preparing reports on H. R. 6358, 85th Congress, a bill for the relief of the Tatem Manufacturing Co., and H. R. 6923, 85th Congress, a bill for the relief of Meriden Industries Co., which relate to subcontractors of Harvey-Whipple, Inc., on the contracts discussed herein.

The cost of this bill, if enacted, cannot be determined at this time.

At the request of the committee this report is being submitted prior to the receipt of Bureau of the Budget advice. As soon as this advice is received, you will be notified.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

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